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**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Ex Parte Notice - CC Docket 95-184 and MM Docket 96-260

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise the Commission that on Monday, January 27, 1997, Carol Melton of Time Warner Inc. and Arthur Harding of Fleischman and Walsh, L.L.P., met with Marcia McBride to discuss Time Warner Cable's position, previously stated in comments filed with the Commission by Time Warner Cable in the above-referenced proceeding and in the attached briefing paper, regarding inside wiring issues involving multichannel video programming service provided in multiple dwelling unit buildings.

If there are any questions regarding the matter, please communicate directly with the undersigned.

Very truly yours,

*Arthur H. Harding*  
Arthur H. Harding

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## **TIME WARNER INSIDE WIRING TALKING POINTS**

### **The Current Point of Demarcation Rules, With Minor Changes, Best Promote Competition and Consumer Choice.**

- The Commission should retain its existing cable inside wiring rules, thus providing incentives for competing providers to build their own facilities to serve MDU residents.
  - Retention of the existing broadband point of demarcation promotes facilities-based competition (which exists only where each MDU resident is able to access more than one provider's wire) by creating incentives for competing MVPDs to build their own distribution facilities in MDUs.
  - Retention of the existing broadband point of demarcation enhances consumer choice because each customer will be able to mix and match services from numerous providers to meet that customer's particular needs.
- Any change in the MDU point of demarcation for broadband facilities would contravene express Congressional directives as set forth in the 1992 Cable Act and the Telecommunications Act of 1996. Nothing in either of these Acts gives the Commission authority to force cable operators to turn over their broadband plant to competitors.
  - The 1992 Cable Act expressly limits the Commission's authority with regard to inside wiring rules. The 1992 Cable Act and its legislative history are very clear that cable home wiring rules are to apply only to wiring within the dwelling unit of the subscriber, and are not to apply to any wiring within the common areas of an MDU. The Commission should not consider enacting rules that do not adhere to this mandate.
  - The "joint use" provision of the 1996 Telecommunications Act, 47 U.S.C. § 572(d)(2), makes clear that Congress intended to allow cable operators to retain ownership of homerun wiring in MDU buildings.
  - The 1996 Act also explicitly demonstrates Congress' intention to promote facilities-based competition. Cable operators, therefore, should not be precluded in any way from continued use of crucial portions of their MDU distribution infrastructure, because they are in a prime position to act as facilities-based competitors to local exchange carriers.
  - Finally, any change in the demarcation point would discourage cable operators from investing in further MDU network upgrades contrary to Congress' intent to promote the deployment of advanced telecommunications services.

- Moving the broadband point of demarcation is not a pro-competitive solution, would stifle facilities-based competition, would constrain cable operators' ability to deliver new and diverse services, and would only augment the power of landlords to make the service choices for their residents.
  - Proposals to move the point of demarcation to the minimum point of entry would effectively turn over complete control of wiring and service within the MDU to the landlord. The point of demarcation for broadband inside wiring must not be moved to any point where MDU landlords have control over inside wiring so that they, rather than the MDU residents, are making service provider choices for the entire MDU building.
  - Proposals to move the point of demarcation to the lockbox or to the point where the wiring first becomes dedicated to the individual subscriber's residence would ensure that MDU residents could only take broadband service from one provider at a time, and thereby hamper the development of facilities-based competition.
  - Proposals advocating shared use of bandwidth over cable distribution wiring or that would create a "virtual" demarcation point where competing MVPDs could interconnect to cable distribution wiring are technically and economically impractical at this time.
- As demonstrated by the following chart, the current MDU point of demarcation rule has been successful in promoting facilities-based competition and consumer choice.

**MDU BUILDINGS IN MANHATTAN SERVED BY  
BOTH TIME WARNER AND LIBERTY**

<b>Year</b>	<b>Buildings</b>	<b>Units</b>
<b>1992</b>	<b>17</b>	<b>3,167</b>
<b>1993</b>	<b>57</b>	<b>8,924</b>
<b>1994</b>	<b>91</b>	<b>16,924</b>
<b>1995</b>	<b>120</b>	<b>35,254</b>
<b>1996</b>	<b>143</b>	<b>45,009</b>

- A change in the MDU demarcation point would result in an unconstitutional taking of a cable operator's property.
  - Moving the broadband point of demarcation to a point further than 12 inches outside a subscriber's dwelling unit, such as the minimum point of entry or the lockbox, would force a cable operator to cede ownership of large portions of its distribution network, effectively constituting a taking without payment of just compensation.

- Any compensation paid for this wiring would have to be determined in an adjudicatory proceeding, not in a rulemaking, and be based on the market value of the wiring which includes consideration of the "highest and best use" of the property. Such compensation must therefore reflect the value of the benefit conferred on the new MVPD, which, at a minimum, includes the cost avoided by the new provider from having to construct such facilities itself.
- In the MDU context the Commission must maintain separate points of demarcation, ultimately based on whether the wiring is broadband or narrowband, rather than the type of service provided over that wiring.
- The narrowband point of demarcation rules should not apply to broadband wiring because those rules were designed only to promote competition for the installation and maintenance of inside wiring, not to promote competition among competing carriers.
- The home wiring rules would continue to be inapplicable to any MDU wired in a loop-through or similar series configuration, or where homeruns are designed to serve more than one unit, because, in such cases, any disruption to the circuit would interfere with the ability of other residents to receive multichannel video programming service from the MVPD of their choice. The FCC might mandate that future MDU installations be configured with dedicated homeruns.

**The Commission Should Not Attempt to Harmonize the Cable and Telephone Inside Wiring Based on the Speculation of Eventual "Convergence" of Wire-Based Distribution Technologies.**

- "Convergence" at some time in the future simply is not a sufficient justification for complete revision of the inside wiring rules because even when convergence occurs, separate narrowband and broadband wiring and plant will continue to be found in most customers' homes.
- Broadband networks, which are capable of simultaneous delivery of multiple services, have unique characteristics which warrant distinction from the inside wiring rules applicable to narrowband telephone networks.

**Landlords' Ability to Restrict Competing MVPDs' Access to Property Must Not be Enhanced by any Changes in the Commission's Inside Wiring Rules.**

- Landlords possess an immense power to foreclose competing services, and often restrict access to MDUs and office buildings.
- The Commission should not interfere with state efforts to guarantee consumers' rights to receive franchised cable service.
- State cable access laws serve to protect tenants from arbitrary landlords who deny their tenants the opportunity to subscribe to franchised cable television service

- State access laws exist, in part, because of a recognition of the franchise obligations imposed on cable operators and the service these obligations bestow on subscribers.
- To the extent the Commission is relying on promotion of competition as authority to move the point of demarcation far outside the customer's premises, such authority similarly empowers the Commission to address MDU bottleneck issues. This policy should be applied even-handedly as to all MVPDs, not just cable operators. To that end, the Commission should adopt the following policy:
  - Where a landlord seeks to allow one or more additional MVPDs to serve an MDU, an existing exclusive contract may not be enforced and the new MVPD may access internal wiring at the point within the building where the "homerun" is configured to deliver service to the particular unit requesting service from such MVPD, but only if the existing MVPD is allowed to maintain access for its network to reach such demarcation point.
  - In these circumstances, the existing MVPD shall be entitled to a reasonable monthly homerun lease fee.
  - If the landlord seeks to deny the existing MVPD the right to continue to serve the MDU, then the existing MVPD is free to raise any claims it has under any existing contracts, including enforcing exclusivity provisions and ownership of its facilities.
  - All future contracts to provide MVPD service to MDUs may not be exclusive.
- This policy is not intended to abrogate all existing exclusive contracts. Rather, it is intended to prevent incumbents from enforcing exclusive contracts unless the incumbent's right to continue to provide service is denied by the landlord.

**Landlords and MVPDs Should Not be Allowed to Circumvent the Ban on Exclusive Contracts Through "Bulk" Arrangements.**

- "Bulk" deals must be addressed because if tenants are forced to pay for MVPD service from the provider chosen by the landlord, they are generally unwilling to pay twice to receive service from another provider. To address this problem, the Commission should adopt the following policy:
  - Volume or bulk discounts are allowed only if service is billed directly to the end user, not the landlord. This will ensure that the benefits of competition are passed on directly to MDU residents, rather than captured by the landlord.
  - No tenant or occupant of any MDU may be required to receive MVPD service bundled with the rent, other than service which consists primarily of retransmitted broadcast signals received over-the-air. Any MVPD services billed by the landlord shall be separately stated and provide the tenant with the right to decline such services, thereby avoiding such charges.

**If the Point of Demarcation for MDUs is Moved, the Commission Must Adopt Safeguards Against Signal Leakage and Theft of Service.**

- Any change of the point of demarcation to the lockbox creates significant potential problems relating to signal leakage and theft of service. Thus, any such change in the point of demarcation should incorporate the following safeguards:
  - At the request of any MVPD seeking to compete with the existing MVPD, the existing MVPD shall install a "neutral" lockbox proximate to the existing MVPD's lockbox.
  - All competing MVPDs within the MDU will have equal access to the neutral lockbox.
  - Upon receipt of notice from an existing customer in an MDU of their desire to switch to another MVPD, the current MVPD shall, within seven business days of such notice, reroute into the neutral lockbox the homerun delivering exclusive service to that subscriber.
  - Thus, the existing provider maintains responsibility over its own facilities to properly complete the disconnect, install a terminator device, and take other appropriate steps to guard against signal leakage and theft of service.
  - The competing MVPD shall bear the costs of installation of the neutral lockbox and rerouting of homeruns (including labor and materials) at prevailing rates.
  - The FCC shall adopt regulations imposing penalties, as set forth in 47 U.S.C. § 553, applicable to any unauthorized person who tampers with any lockbox or other cable distribution facilities.